FILE COPY

Office-Supreme Court, U.S.
FILED
NOV 16 1950
[illegible], Clerk

No. 351

In the Supreme Court of the United States

October Term, 1950

TRUCK DRIVERS AND HELPERS LOCAL UNION NO. 728, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

J. LEE RANKIN,
Solicitor General,
Department of Justice,
Washington 25, D. C.

STUART ROTHMAN,
General Counsel,

THOMAS J. McDERMOTT,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

FLORIAN J. BARTOSIC,
Attorney,
National Labor Relations Board,
Washington 25, D. C.

INDEX

	Page
Opinions below	1
Jurisdiction	2
Question presented	2
Statute involved	2
Statement	3
A. The Board's findings and conclusions	3
B. The Board's order	10
C. The decision of the Court of Appeals	10
Argument	10
Conclusion	14

CITATIONS

Cases:

International Brotherhood of Electrical Workers v. *National Labor Relations Board*, 341 U.S. 694	13
Local 1976, Carpenters' Union v. *National Labor Relations Board*, 357 U.S. 93	9, 11, 12
United States v. *Schaefer Brewing Co.*, 356 U.S. 227	2

Statutes and rule:

Labor-Management-Reporting and Disclosure Act of 1959 (Public Law 86-257), Section 701(b), 73 Stat. 543	11
National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*), Section 8(b)(4)(A)	2, 3, 9, 10, 11
28 U.S.C. 2101(c)	2
Rule 22(3), Revised Rules of the Supreme Court of the United States	2

In the Supreme Court of the United States

October Term, 1959

No. 501

TRUCK DRIVERS AND HELPERS LOCAL UNION NO. 728, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. 59-70) is reported at 265 F. 2d 439. The Board's decision and order (R. 66-142)[1] are reported at 119 NLRB 399.

---

[1] References to Volume I, Transcript of Record, printed pursuant to the rules of the court below, are designated "R." References to portions of the testimony and exhibits,

JURISDICTION

The judgment below was entered on April 8, 1959 (Pet. 71). A petition for rehearing was denied on June 11, 1959 (Pet. 72), and a formal decree enforcing the Board's order, as modified, was entered on July 31, 1959 (Pet. 73). The petition for certiorari was filed on October 28, 1959.[2] The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether substantial evidence supports the Board's finding that petitioner Union induced and encouraged the employees of freight carriers to refuse to handle the freight of ~~General~~ Parts Company in violation of Section 8(b)(4)(A) of the National Labor Relations Act.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C. 151, *et seq.*) are set forth at pp. 7-8 of the petition.

---

printed by the petitioner and the Board as appendices to their briefs below, are designated by the symbols "P.A." and "B.A." Occasional references to portions of the testimony not so printed are designated "Tr."

[2] There may be a question as to the timeliness of the petition. If the time for filing a petition for certiorari is to be calculated from the date of denial of the petition for rehearing rather than the date of entry of the formal decree, the petition is untimely. 28 U.S.C. 2101(c); Rule 22(3), Revised Rules of the Supreme Court of the United States. Cf. *United States* v. *Schaefer Brewing Co.*, 356 U.S. 227.

STATEMENT

A. *The Board's findings and conclusions.*—The Board found that petitioner Union violated Section 8(b)(4)(A) of the Act by inducing and encouraging the employees of several freight carriers to refuse to handle the freight of the Genuine Parts Company, with the object of forcing or requiring the carriers to cease doing business with Genuine Parts. The evidence upon which the Board based its findings is summarized below.

On March 12, 1956, the Union, which is the certified bargaining representative of the production and maintenance employees of the Rayloc Division of Genuine Parts, initiated a strike in support of bargaining demands, and on March 19 set up picket lines at all Genuine Parts installations in the Atlanta area (R. 18, 22, 34; B.A. 30, 34). Most of the freight carriers performing services for Genuine Parts employ members of the Union under area-wide agreements containing the "hot cargo" clause set forth at pp. 8-9 of the Petition (R. 4, 5, 22-23; 68; P.A. 19-20, 48). Although the Union had not notified the carriers of the picketing pursuant to the provisions of the contract, the employees of the carriers respected the picket lines at the Genuine Parts installations (R. 70; B.A. 8, 13, 24-25, 30, 43). Thereupon, the freight from Genuine Parts was delivered to the docks of the carriers by independent drayage companies or by vehicles of Genuine Parts itself (R. 70; B.A. 13, 24-25, 30), and until the day after the Union meeting of March 27, the carriers experienced little difficulty in

having their employees handle Genuine Parts freight at the carriers' docks (R. 70; B.A. 25, 27).

Union Secretary-Treasurer Mathis called a "special meeting" of the Union for March 27, and each steward was so advised by a letter, which was in turn to be posted on the bulletin boards provided by the carriers (R. 70; P.A. 1, 10, 23). According to Mathis, the meeting was called "for the specific purpose of determining whether the members wanted to handle the goods of Genuine Parts and Rayloc or not to handle them" (P.A. 10). Of a total membership of 5,500, of which 2,500 were covered by the agreements containing the "hot cargo" clause, approximately 400 attended the meeting (R. 35; P.A. 5, 20, 136). No employees were in attendance from three or four of the carriers subject to the agreements (P.A. 6).

Mathis, who presided, opened the meeting by reporting to the membership that negotiations with Genuine Parts had been conducted for four or five months, but Genuine Parts refused to grant any pay increase or, for that matter, any kind of a "decent agreement" (R. 36; P.A. 12-13, 148). Mathis stated that the Union had been receiving telephone calls from members wanting to know about handling Genuine Parts freight, and that the purpose of the meeting was "to determine what they wanted to do" (P.A. 13). He proceeded to read the "hot cargo" clause, which provided, *inter alia*, that the members "individually" reserved the right to refuse to handle "unfair" goods, and that the insistence of an employer that his employees handle "unfair" goods "after they have elected not to" shall be "sufficient cause for an

immediate strike of" his operations "without any need to go through the grievance procedure" (P.A. 25, Pet. 8-9). A discussion then ensued for about one hour, during which Mathis indicated that "there probably would be a resolution adopted during the course of the meeting (P.A. 27, 148, B.A. 40).

At the conclusion of the discussion, Member Kent moved "that the members of Local 728 refuse to handle the goods of Rayloc and Genuine Parts" (P.A. 27-28, B.A. 41). But Mathis rejected the motion because it did not state that the employees desired "to exercise their rights as individuals" to refuse to handle the goods (P.A. 28, Tr. 245). Accordingly, Mathis himself drafted the following resolution:

> * * * each member has the right to make an individual voluntary decision as to whether he will or will not handle goods or equipment consigned to or received from this Company [Genuine Parts].
>
> In accordance with this right each of the members has made and now announces his individual voluntary decision not to handle such goods.
>
> Under the * * * Articles [of the agreements with the carriers], it is the obligation of the Union to give each employer notice of the intent of the members to refuse to handle these unfair goods and in order to comply with the obligations of these Articles, the officials of the Union are hereby requested to notify each carrier employer of the intent of these members to refuse to handle these described goods [P.A. 148-149, Tr. 246-248, 250-252].

Mathis' resolution was adopted unanimously by a show of hands (P.A. 10, 29, 149, B.A. 41).

On March 28, the Union, through its assistant business agent, sent the following notice to all freight carriers who were parties to the area-wide "hot cargo" contract:

> To All Operators:
>
> Dear Sir: As you may know, Teamsters' Local 728 is on strike and engaged in picketing Genuine Parts Company's Atlanta area offices and plants, including the Rayloc plant.
>
> In pursuance of their rights under Article IX of the Southeastern Area Over-the-Road Motor Freight Agreement and Article XI of the Local Freight Forwarding Pickup and Delivery Agreement, the members have each made an individual voluntary decision to refuse to handle goods or equipment consigned to or received from this Company. This election has been approved in writing by the responsible officials of the Southern States Drivers' Council.
>
> Under the provisions of the above-mentioned Articles, the Union has the obligation to give you notice of the intent of the members to refuse to handle these unfair goods, and the members have requested that we give you this notice. This letter will serve as such notice [R. 71; P.A. 7].

Following the March 27 Union meeting, the employees of most of the carriers uniformly refused to handle Genuine Parts freight (R. 71-72; P.A. 9).[3]

---

[3] According to Mathis, he had been advised of "some instances" in which members did handle Genuine Parts freight. However, he was unable to recall the name of any employer

When asked to handle such freight, the employees used the stock reply: "I personally refuse to handle" (R. 72; B.A. 11). Indeed, it was stipulated at the hearing that the Union had a "number of witnesses" (230 in all) who would testify, if called, that they were employed by carriers who were parties to the contract and had refused to handle Genuine Parts goods on "one or more occasions" after March 27 (R. 28-29, 72). Some of these members had attended the Union meeting and some had not (R. 28-29, 72).

On April 6, a few days after the Union meeting, a Genuine Parts truck delivered freight to the dock of the Simpson Express Company for carriage over the Simpson line (R. 49; B.A. 13). B. C. Simpson, president of the company, saw Dock Foreman Roan in conversation with Union Steward Woodbury (R. 49, 104; B.A. 13-14). Joining them, Simpson heard Woodbury, who was holding a bill of lading in his hand, state that he could not handle the freight because it was from Genuine Parts (R. 49; B.A. 14-15). When Simpson asked that the freight be handled because the company might be sued if it was not, Woodbury replied that he would "have to call the union hall and see what they say" (R. 49; B.A. 15, 22). Woodbury then made a telephone call at a nearby booth and returned to say: "They told me not to; we can't handle it" (R. 49; B.A. 15, 22). In reply to the query to whom he had spoken, he

---

so involved, nor was there any other evidence presented indicating that the boycott of Genuine Parts goods was not complete (R. 72; B.A. 4, P.A. 17).

named Union Assistant Business Agent Pulliam (R. 49; B.A. 15, 23).

A short time later, in the presence of several employees, Simpson asked Steward Woodbury if he would ask the employees to handle the Genuine Parts freight, but Woodbury stated he could not (R. 49, 104; B.A. 15-16). Simpson then asked employee Fulcher, in Woodbury's presence, to handle the freight (R. 49, 104; B.A. 18-19, 23). Fulcher replied he could not do so, "if the steward told him not to handle it," and Woodbury said nothing (R. 50, 104; B.A. 19-20). Finally, Simpson asked the group of employees assembled on the dock what would happen if Simpson, himself, should handle the freight (R. 50, 104; B.A. 18). Woodbury replied that "the boys would probably walk off the job" (R. 50, 104; B.A. 18). The Genuine Parts truck then departed (B.A. 18).

Prior to the Union meeting of March 27, the employees of Akers Motor Lines handled Genuine Parts freight which was delivered to Akers by a local drayage company (R. 52-53; B.A. 25). During this period Union Steward Jimmie Butler told the employees he "would file a grievance against them if they handled the freight" (R. 104; B.A. 32). On March 28, Akers received the Union's letter notifying all carriers that the employees intended to refuse to handle Genuine Parts freight (R. 53; B.A. 25). Beginning on March 30, the employees refused to handle such goods, and on the same day the terminal manager for Akers received a phone call from Union Secretary-Treasurer Mathis who stated: "You are

not supposed to ask the men to handle it after you received our letter. If you handle any more, I will have to strike you" (R. 53-54, 81-82; B.A. 25-27).

Similarly, when the terminal manager of Benton Motors Express asked, after the March 27 meeting, whether his employees might handle Genuine Parts freight, two Union business agents gave him a "friendly tip"—that he would have "trouble" if he insisted. Thereafter, Mathis phoned the manager and warned him that, under the contract, the employer could not insist that the employees handle goods which they had elected not to handle (R. 81-82; B.A. 9-10).

On the basis of the foregoing, the Board found that by calling and conducting the special meeting for the purpose of considering the "hot cargo" action of the membership, by drafting and sponsoring the resolution by which the members present collectively announced the "individual" decisions of all the members, and by the other conduct set forth *supra*, pp. 7-9, the Union had induced and encouraged the employees of the carriers to engage in a concerted refusal in the course of their employment to handle Genuine Parts freight, with the object of forcing the carriers to cease doing business with Genuine Parts, in violation of Section 8(b)(4)(A) of the Act (R. 26-27, 81-82, 106). In so holding, the Board also found that the Union's action was not privileged by the "hot cargo" clause (R. 101).[4]

---

[4] A majority of the Board also found that the clause was invalid. However, in view of this Court's supervening holding in *Local 1976, Carpenters' Union* v. *National Labor Rela-*

B. *The Board's order.*—The Board's order (R. 107-109) required the Union to cease and desist from inducing and encouraging the employees of the carriers to engage in a strike or concerted refusal to handle Genuine Parts freight to force any such employer to discontinue doing business with Genuine Parts or "with any other like person or company who has business relations with aforementioned carriers in the Atlanta area."

C. *The decision of the court of appeals.*—The court below held that the activities set forth at pp. 4-9, *supra*, constituted "union action to induce the employees of the carriers not to handle the freight and to impose the Teamsters' will on the secondary employees and employers" (Pet. 67) and "that there is substantial evidence to support the Board's finding that the Union violated Section 8(b)(4)(A)" (Pet. 69). The court enforced the Board's order, after deleting the words "or with any other like person or company who has public relations with aforementioned carriers in the Atlanta area" (Pet. 69-70).

ARGUMENT

As petitioner states (Pet. 29, 32), the decisive issue in this case is whether the Union meeting of March 27 was utilized for the purpose of inducing the members to refrain from handling the goods of Genuine Parts or whether it was a mere effort on the part of the Union to inform the members of their

---

tions Board, 357 U.S. 93, that a "hot cargo" clause is not a defense under Section 8(b)(4)(A), irrespective of its validity, this aspect of the Board's decision played no part in the judgment of the court below and is no longer significant.

individual right to refrain from handling these goods and to ascertain their wishes.[5] The Board found on the record as a whole that the purpose of the meeting was to bind the membership to the decision of the Union officials to boycott Genuine Parts' goods and that the meeting was conducted in such a manner as to constitute inducement and encouragement of employees to engage in the boycott, in violation of the Act. Petitioner's attack upon the adequacy of the evidentiary support for this factual finding, sustained by the court below, presents no issue warranting review by this Court.

In any event, the Board's findings in this respect are clearly supported by the record. That the special meeting was merely a guise for embarking on a Union-sponsored boycott is shown by the fact that

---

[5] Contrary to petitioner's intimation (Pet. 22-23), there is no issue here as to the legality of the so-called "Protection of Rights" or "hot cargo" clause. As noted above, the Board found that petitioner illegally induced the employees to engage in secondary work stoppages and, in addition, that the "hot cargo" clause was also violative of the Act. Subsequently, however, this Court held in *Local 1976, Carpenters' Union* v. *National Labor Relations Board*, 357 U.S. 93, that such a clause is not a defense under Section 8(b)(1)(A) of the Act, irrespective of its validity. Accordingly there no longer is any occasion in the instant case to consider the legality of the clause itself. Moreover, it may be pointed out that Section 701(b), Labor-Management Reporting and Disclosure Act of 1959 (Public Law 86-257), 73 Stat. 543, makes it an unfair labor practice for a labor organization and an employer to enter into an agreement, express or implied, whereby such employer "ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or to cease doing business with any other person * * *."

it was held only after the effectiveness of the Union's picket line was being dissipated (pp. 3-4, *supra*); by the manner in which Secretary-Treasurer Mathis conducted the meeting (pp. 4-6, *supra*); and by Mathis' introduction of his own resolution which, although it contained the words "individual voluntary decision," rigidly committed all affected members, even the absent 2,000, to a collective or Union boycott (p. 5, *supra*). The resolution did not purport to give the individual member any discretion as to whether he would or would not handle Genuine Parts freight at the time when choice became most meaningful, *i.e.*, when the goods arrived at the carrier's dock and the carrier requested the employee to handle them (see *Local 1976, Carpenters' Union* v. *National Labor Relations Board*, 357 U.S. 93, 105). Moreover, after the Union meeting, the employees gave the same answer, "I personally refuse to handle," when asked to handle Genuine Parts freight (p. 7, *supra*), and Mathis threatened at least two carriers with strikes if they insisted that their employees handle the freight (pp. 8-9, *supra*). Finally, the actions and statements of two of the Union stewards (pp. 7-8, *supra*) furnish direct proof that the Union's objective was inducement of carrier employees not to handle the freight. Indeed, the actions and statements of the stewards constituted such inducement.* In this setting, there was

---

*There is no substance to petitioner's subsidiary contention (Pet. 17-57) that there is no basis in the record for holding it responsible for the acts and statements of its stewards. The evidence shows that the stewards performed

ample basis for the Board to conclude that the Union violated the statutory prohibition against inducement or encouragement of employees to engage in secondary work stoppages—a prohibition which is "broad enough to include * * * every form of influence and persuasion." *International Brotherhood of Electrical Workers* v. *National Labor Relations Board*, 341 U.S. 694, 701-702.

---

the usual duties generally associated with the position, including the transmission of official Union messages and instructions (R. 102-103; P.A. 9-10, 152-153), and employee Fulcher stated that he could not handle the freight "if the steward told him not to" (p. 8, *supra*). To the employees, the stewards were the "Union on the job" (R. 103). The contract, which purports to limit the authority of the stewards to call work stoppages to situations "authorized by official action of the Union" (R. Ex. 3, Art. V), does not require written authorization, and, further, the contract limitation cannot detract from the otherwise apparent authority of the stewards to call Union work stoppages. In these circumstances the Board could properly find, as it did, that the stewards were acting for and on behalf of the Union.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

J. LEE RANKIN,
Solicitor General.

STUART ROTHMAN,
General Counsel,

THOMAS J. MCDERMOTT,
Associate General Counsel,

DOMINICK L. MANOLI,
Assistant General Counsel,

FLORIAN J. BARTOSIC,
Attorney,
National Labor Relations Board.

NOVEMBER 1959.

☆ U. S. GOVERNMENT PRINTING OFFICE 1959 531022 660